

PROPOSED

HOUSE OF REPRESENTATIVES AMENDMENTS TO S.B. 1507

(Reference to Senate engrossed bill)

1 Strike everything after the enacting clause and insert:

2 "Section 1. Section 28-363, Arizona Revised Statutes, is amended
3 effective from and after August 31, 2008, to read:

4 28-363. Duties of the director; administration

5 A. The director shall:

6 1. Supervise and administer the overall activities of the department
7 and its divisions and employees.

8 2. Appoint assistant directors for each of the divisions.

9 3. Provide for the assembly and distribution of information to the
10 public concerning department activities.

11 4. Delegate functions, duties or powers as the director deems
12 necessary to carry out the efficient operation of the department.

13 5. Exercise complete and exclusive operational control and
14 jurisdiction over the use of state highways and routes.

15 6. Coordinate the design, right-of-way purchase and construction of
16 controlled access highways that are either state routes or state highways and
17 related grade separations of controlled access highways.

18 7. Coordinate the design, right-of-way purchase, construction,
19 standard and reduced clearance grade separation, extension and widening of
20 arterial streets and highways under chapters 17 and 18 of this title.

21 8. Assist regional transportation planning agencies, councils of
22 government, tribal governments, counties, cities and towns in the development
23 of their regional and local transportation plans to ensure that the streets,
24 highways and other regionally significant modes of transportation within each
25 county form an integrated and efficient regional system.

1 9. On or before December 1, present an annual report to the speaker of
2 the house of representatives and the president of the senate documenting the
3 expenditures of monies under chapters 17 and 18 of this title during the
4 previous fiscal year relating to the design, right-of-way purchase or
5 construction of controlled access highways that are accepted in the state
6 highway system as state routes or state highways or related grade separations
7 of controlled access highways that are included in the regional
8 transportation plans of the counties.

9 10. Designate the necessary agencies for enforcing the provisions of
10 the laws the director administers or enforces.

11 11. Exercise other duties or powers as the director deems necessary to
12 carry out the efficient operation of the department.

13 12. Cooperate with the Arizona-Mexico commission in the governor's
14 office and with researchers at universities in this state to collect data and
15 conduct projects in the United States and Mexico on issues that are within
16 the scope of the department's duties and that relate to quality of life,
17 trade and economic development in this state in a manner that will help the
18 Arizona-Mexico commission to assess and enhance the economic competitiveness
19 of this state and of the Arizona-Mexico region.

20 13. Develop ~~AND ANNUALLY PRESENT~~ a plan ~~TO THE BOARD~~ to increase ~~THE~~
21 use of bypass routes by vehicles ~~on days of poor visibility~~ in ~~the Phoenix~~
22 ~~metropolitan area~~ ~~CONGESTED AREAS THROUGH THE USE OF AGREEMENTS WITH ANY~~
23 ~~PRIVATE ENTITY OR UNIT OF GOVERNMENT OR ANY CONFIGURATION OF PRIVATE ENTITIES~~
24 ~~AND UNITS OF GOVERNMENT THAT INVOLVE THE PLANNING, ACQUISITION, FINANCING,~~
25 ~~DEVELOPMENT, DESIGN, CONSTRUCTION, RECONSTRUCTION, REPLACEMENT, IMPROVEMENT,~~
26 ~~MAINTENANCE, MANAGEMENT, REPAIR, LEASING AND OPERATION OF TRANSPORTATION~~
27 ~~PROJECTS.~~

28 B. The assistant directors appointed pursuant to subsection A are
29 exempt from the state personnel system.

30 C. The director shall not spend any monies, adopt any rules or
31 implement any policies or programs to convert signs to the metric system or
32 to require the use of the metric system with respect to designing or

1 preparing plans, specifications, estimates or other documents for any highway
2 project before the conversion or use is required by federal law, except that
3 the director may:

4 1. Spend monies and require the use of the metric system with respect
5 to designing or preparing plans, specifications, estimates or other documents
6 for a highway project that is awarded before October 1, 1997 and that is
7 exclusively metric from its inception.

8 2. Prepare for conversion to and use of the metric system not more
9 than six months before the conversion or use is required by federal law.

10 Sec. 2. Section 28-366, Arizona Revised Statutes, is amended effective
11 from and after August 31, 2008, to read:

12 28-366. Director; rules

13 The director shall adopt rules pursuant to title 41, chapter 6 as the
14 director deems necessary for:

15 1. Collection of taxes and license fees.

16 2. Public safety and convenience.

17 3. Enforcement of the provisions of the laws the director administers
18 or enforces.

19 4. The use of state highways and routes to prevent the abuse and
20 unauthorized use of state highways and routes.

21 5. AGREEMENTS OR ANY CONFIGURATION OF AGREEMENTS RELATING TO
22 TRANSPORTATION PROJECTS WITH ANY PRIVATE ENTITY OR UNIT OF GOVERNMENT OR ANY
23 CONFIGURATION OF PRIVATE ENTITIES AND UNITS OF GOVERNMENT.

24 Sec. 3. Section 28-367, Arizona Revised Statutes, is amended effective
25 from and after August 31, 2008, to read:

26 28-367. Public transit

27 The director shall:

28 1. Receive, allocate, control and disperse all monies designated for
29 state public transit programs by federal or state law or rule.

30 2. Pass on projects for construction in cooperation with the United
31 States.

1 3. Negotiate and enter into contracts on behalf of this state with the
2 United States for the cooperative construction and maintenance of federal aid
3 public transit systems in this state.

4 4. Enter into agreements on behalf of this state with ~~counties,~~
5 ~~cities, towns, public transit districts or any other political subdivisions~~
6 ANY PRIVATE ENTITY OR UNIT OF GOVERNMENT OR ANY CONFIGURATION OF PRIVATE
7 ENTITIES AND UNITS OF GOVERNMENT for the OPERATION, improvement or
8 maintenance of public transit systems or for the joint OPERATION, improvement
9 or maintenance of public transit systems.

10 5. Enter into contracts WITH ANY PRIVATE ENTITY OR UNIT OF GOVERNMENT
11 OR ANY CONFIGURATION OF PRIVATE ENTITIES AND UNITS OF GOVERNMENT for the
12 construction OR FOR THE JOINT CONSTRUCTION of state public transit systems.

13 6. Adopt rules for the application for and the expenditure of all
14 public transit monies.

15 Sec. 4. Section 28-5611, Arizona Revised Statutes, is amended
16 effective from and after August 31, 2008, to read:

17 28-5611. Refunds; motor vehicle fuel

18 A. Except as provided in subsection B of this section, on application
19 to the director pursuant to this article and if section 28-5612 is complied
20 with, a person who buys and uses motor vehicle fuel shall receive a refund in
21 the amount of the tax if the person pays the tax on the fuel and either:

22 1. Uses the fuel other than in any of the following:

23 (a) A motor vehicle on a highway in this state.

24 (b) Watercraft on the waterways of this state.

25 (c) A motor vehicle operating on a transportation facility ~~or toll~~
26 ~~road~~ pursuant to chapter 22 of this title.

27 2. Buys aviation fuel for use in aircraft applying seeds, fertilizer
28 or pesticides.

29 3. Loses the fuel by fire, theft or other accident.

30 B. If a claim for refund is based on the use of motor vehicle fuel in
31 aircraft, five cents of the tax collected on each gallon of motor vehicle

1 fuel claimed shall remain in the state aviation fund, and the department
2 shall refund the remainder of the tax pursuant to section 28-5612.

3 Sec. 5. Section 28-7009, Arizona Revised Statutes, is amended
4 effective from and after August 31, 2008, to read:

5 28-7009. Statewide transportation acceleration needs account:
6 establishment; definition

7 A. The statewide transportation acceleration needs account is
8 established as a separate account in the state highway fund. The account
9 consists of all of the following, except that the source of monies in the
10 fund shall not be a consent agreement or any type of negotiated settlement by
11 any state or local agency or any donation made in place of a consent
12 agreement or any type of settlement:

13 1. Monies appropriated by the legislature.

14 2. Monies designated for deposit in the account by the transportation
15 board, a state agency or a political subdivision.

16 3. Monies received from the United States government for the purpose
17 of accelerating transportation projects.

18 4. Monies received from political subdivisions, Indian tribes or this
19 state or its agencies for the purpose of accelerating transportation
20 projects.

21 5. Interest and other income received from investing monies in the
22 account.

23 6. Gifts, grants, donations or other amounts received from any public
24 or private source for deposit in the account for the purpose of accelerating
25 transportation projects.

26 B. On notice from the transportation board, the state treasurer shall
27 invest and divest monies in the statewide transportation acceleration needs
28 account as provided by section 35-313, and monies earned from investment
29 shall be credited to the account.

30 C. The transportation board may establish any subaccount in the
31 statewide transportation acceleration needs account that the board determines
32 is necessary or appropriate to carry out the purposes of this section.

1 D. If a governmental entity or a private person deposits monies in the
2 statewide transportation acceleration needs account for acceleration of a
3 specific project and the appropriate regional planning agency or council of
4 governments in cooperation with the transportation board approves the
5 project, the board shall designate the monies deposited by the governmental
6 entity or private person solely for the project for which the monies are
7 deposited.

8 E. Notwithstanding section 28-6993, and any other agreements entered
9 into by the department of transportation for the distribution and expenditure
10 of monies from the state highway fund, the transportation board shall not
11 approve any expenditures from the statewide transportation acceleration needs
12 account unless the expenditure is made in accordance with this section and is
13 for the construction or reconstruction of freeways, state highways, bridges
14 and interchanges that are contained in the regional transportation plan of a
15 county or the department's long-range statewide transportation plan pursuant
16 to section 28-506. For the purposes of this subsection, a regional
17 transportation plan is a twenty year comprehensive, performance based,
18 multimodal and coordinated regional transportation plan that is approved for
19 the county as provided by law and as amended or otherwise modified.

20 F. Except as provided in sections 28-7010 and 28-7011, monies in the
21 statewide transportation acceleration needs account shall be used only to pay
22 for the following costs of a transportation project approved pursuant to this
23 section **ON OR AFTER JULY 1, 2006:**

- 24 1. Materials and labor.
- 25 2. Acquisition of rights-of-way for highway needs.
- 26 3. Design and other engineering services that are within the scope of
27 engineering practice as provided in title 32, chapter 1.
- 28 4. **INTEREST COSTS FROM BONDS, LOANS, NOTES OR ADVANCES ISSUED TO, BY**
29 **OR ON BEHALF OF A CITY OR COUNTY.**
- 30 ~~4.~~ 5. Other directly related costs approved by the transportation
31 board.

1 G. Monies in the statewide transportation acceleration needs account
2 that are appropriated by the legislature and any interest earnings shall be
3 allocated as follows:

4 1. For a county with a population of at least one million two hundred
5 thousand persons for the area included in the regional planning agency's
6 transportation improvement plan, sixty per cent.

7 2. For a county with a population of more than five hundred thousand
8 persons but less than one million two hundred thousand persons for the area
9 included in the regional planning agency's transportation improvement plan,
10 sixteen per cent.

11 3. For all other counties, twenty-four per cent.

12 H. The regional planning agency in a county designated as a
13 transportation management area shall establish a process for the review and
14 approval of transportation projects eligible to receive monies from the
15 statewide transportation acceleration needs account. As part of its request
16 to the transportation board for monies, the regional planning agency shall
17 ensure and submit evidence satisfactory to the board that any project costs
18 not eligible for monies from the statewide transportation acceleration needs
19 account are available and dedicated to the project. In all other counties,
20 the department, in cooperation with the metropolitan planning organization or
21 the council of governments that has the authority to approve transportation
22 projects for the county, shall develop requests for expenditure of monies
23 from the statewide transportation acceleration needs account. As part of the
24 request to the transportation board for monies, the metropolitan planning
25 organization or the council of governments for the department shall submit
26 evidence satisfactory to the board that any project costs not eligible for
27 monies from the statewide transportation acceleration needs account are
28 available and dedicated to the project.

29 I. On receipt of a request for monies from the statewide
30 transportation acceleration needs account, the transportation board shall
31 place the request on the agenda for the next regular business meeting of the
32 board. The board shall review the request and, in cooperation with the

1 regional planning agency, the metropolitan planning organization or the
2 council of governments, approve the request or further modify the request
3 before approval.

4 J. The transportation board shall not approve the release of any
5 monies from the statewide transportation acceleration needs account for a
6 transportation project unless the board verifies that all costs related to
7 construction of the project are covered.

8 K. Monies in the statewide transportation acceleration needs account
9 shall be used to supplement, not supplant, funding that would otherwise be
10 made available for projects.

11 L. On or before July 1 of each year, the transportation board shall
12 submit a report of its activities pursuant to this section to the governor,
13 the president of the senate and the speaker of the house of representatives
14 and shall provide a copy of this report to the secretary of state, the
15 director of the joint legislative budget committee and the director of the
16 Arizona state library, archives and public records.

17 M. A regional planning agency that receives monies from the statewide
18 transportation acceleration needs account shall report on or before December
19 15 of each year to the senate and house of representatives transportation
20 committees on approved projects and amounts expended for those projects.

21 N. For the purposes of this section, "project" means the construction
22 or reconstruction of a specific portion of a freeway or state highway or a
23 bridge or interchange or a portion of a bridge or interchange that is
24 constructed at a single location.

25 Sec. 6. Repeal

26 Title 28, chapter 22, Arizona Revised Statutes, is repealed from and
27 after August 31, 2008.

1 Sec. 7. Title 28, Arizona Revised Statutes, is amended by adding a new
2 chapter 22 effective from and after August 31, 2008, to read:

3 CHAPTER 22

4 ARIZONA NEW DIRECTIONS IN INNOVATION PROGRAM

5 ARTICLE 1. GENERAL PROVISIONS

6 28-7701. Definitions

7 IN THIS CHAPTER, UNLESS THE CONTEXT OTHERWISE REQUIRES:

8 1. "AFFECTED JURISDICTION" MEANS ANY COUNTY, CITY OR TOWN OR OTHER
9 UNIT OF GOVERNMENT IN THIS STATE IN WHICH ALL OR PART OF A TRANSPORTATION
10 FACILITY IS LOCATED OR ANY OTHER PUBLIC ENTITY DIRECTLY AFFECTED BY THE
11 TRANSPORTATION FACILITY.

12 2. "AGREEMENT" MEANS A WRITTEN AGREEMENT, INCLUDING AN INITIATIVE OR
13 AN AGREEMENT FOR A TRANSPORTATION PROJECT THAT IS ENTERED INTO UNDER SECTION
14 28-7703.

15 3. "BOND" MEANS ANY BOND, NOTE, INTERIM CERTIFICATE, CONTRACT OR OTHER
16 EVIDENCE OF INDEBTEDNESS AUTHORIZED BY THIS CHAPTER.

17 4. "FORCE MAJEURE" MEANS AN UNCONTROLLABLE FORCE OR NATURAL DISASTER
18 THAT IS NOT WITHIN THE POWER OF THE OPERATOR OR THIS STATE.

19 5. "MAINTENANCE" INCLUDES ORDINARY MAINTENANCE, REPAIR,
20 REHABILITATION, CAPITAL MAINTENANCE, MAINTENANCE REPLACEMENT AND ANY OTHER
21 CATEGORIES OF MAINTENANCE THAT MAY BE DESIGNATED BY THE DEPARTMENT.

22 6. "MATERIAL DEFAULT" MEANS ANY FAILURE OF AN OPERATOR TO PERFORM ANY
23 DUTIES UNDER A PUBLIC-PRIVATE AGREEMENT THAT JEOPARDIZES DELIVERY OF ADEQUATE
24 SERVICE TO THE PUBLIC AND REMAINS UNSATISFIED AFTER A REASONABLE PERIOD OF
25 TIME AND AFTER THE OPERATOR RECEIVES WRITTEN NOTICE FROM THE DEPARTMENT OF
26 THE FAILURE.

27 7. "OPERATE" MEANS ANY ACTION TO MAINTAIN, REHABILITATE, IMPROVE,
28 EQUIP OR MODIFY A TRANSPORTATION FACILITY.

29 8. "OPERATOR" MEANS A PRIVATE ENTITY THAT HAS ENTERED INTO A
30 PUBLIC-PRIVATE AGREEMENT UNDER THIS CHAPTER.

1 9. "PRIVATE ENTITY" MEANS ANY NATURAL PERSON, CORPORATION, GENERAL
2 PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED PARTNERSHIP, JOINT VENTURE,
3 BUSINESS TRUST, PUBLIC BENEFIT CORPORATION, NONPROFIT ENTITY OR OTHER
4 BUSINESS ENTITY.

5 10. "PUBLIC-PRIVATE AGREEMENT" MEANS THE AGREEMENT BETWEEN A PRIVATE
6 ENTITY AND THE DEPARTMENT THAT RELATES TO THE DEVELOPMENT, FINANCING,
7 MAINTENANCE OR OPERATION OF A TRANSPORTATION FACILITY SUBJECT TO THIS
8 CHAPTER.

9 11. "PUBLIC-PRIVATE INITIATIVE" MEANS AN ARRANGEMENT BETWEEN THE
10 DEPARTMENT AND ONE OR MORE PRIVATE ENTITIES, THE TERMS OF WHICH ARE STATED IN
11 A PUBLIC-PRIVATE AGREEMENT THAT PROVIDES FOR:

12 (a) ACCEPTANCE OF A PRIVATE CONTRIBUTION, INCLUDING A MONEY PAYMENT,
13 FOR A PROJECT OR SERVICE FOR A TRANSPORTATION FACILITY.

14 (b) SHARING OF RESOURCES AND THE MEANS OF PROVIDING A PROJECT OR
15 SERVICE FOR A TRANSPORTATION FACILITY.

16 (c) COOPERATION IN RESEARCHING, DEVELOPING AND IMPLEMENTING PROJECTS
17 OR SERVICES FOR A TRANSPORTATION FACILITY.

18 12. "REVENUES" MEANS ANY TOLLS, FEES, RATES, CHARGES, ASSESSMENTS,
19 GRANTS, CONTRIBUTIONS OR OTHER INCOME AND REVENUES RECEIVED.

20 13. "TRANSPORTATION FACILITY" MEANS ANY, INCLUDING ANY NEW OR EXISTING,
21 HIGHWAY, ROAD, BRIDGE, TUNNEL, OVERPASS, FERRY, AIRPORT, PUBLIC
22 TRANSPORTATION FACILITY, VEHICLE PARKING FACILITY, SEAPORT FACILITY, RAIL
23 FACILITY, INTERMODAL FACILITY OR SIMILAR FACILITY OPEN TO THE PUBLIC AND USED
24 FOR THE TRANSPORTATION OF PERSONS OR GOODS AND ANY BUILDING, STRUCTURE,
25 PARKING AREA, APPURTENANCES OR OTHER PROPERTY NEEDED TO OPERATE THE FACILITY
26 THAT IS SUBJECT TO A PUBLIC-PRIVATE AGREEMENT.

27 14. "TRANSPORTATION PROJECT" MEANS ANY PROPOSED OR EXISTING UNDERTAKING
28 THAT FACILITATES ANY MODE OF TRANSPORTATION IN THIS STATE.

29 15. "UNIT OF GOVERNMENT" MEANS ANY DEPARTMENT OR AGENCY OF THE FEDERAL
30 GOVERNMENT, ANY STATE OR ANY AGENCY, OFFICE OR DEPARTMENT OF A STATE, ANY
31 CITY, COUNTY, DISTRICT, COMMISSION, AUTHORITY, ENTITY, PORT OR OTHER PUBLIC

1 CORPORATION ORGANIZED AND EXISTING UNDER STATUTORY LAW OR UNDER A VOTER
2 APPROVED CHARTER AND ANY INTERGOVERNMENTAL ENTITY.

3 16. "USER FEES" MEANS THE RATES, TOLLS, FEES OR OTHER CHARGES IMPOSED
4 BY AN OPERATOR FOR USE OF ALL OR PART OF A TRANSPORTATION FACILITY.

5 17. "UTILITY" MEANS A PRIVATELY, PUBLICLY OR COOPERATIVELY OWNED LINE,
6 FACILITY OR SYSTEM FOR PRODUCING, TRANSMITTING OR DISTRIBUTING
7 COMMUNICATIONS, CABLE TELEVISION, POWER, ELECTRICITY, LIGHT, HEAT, GAS, OIL,
8 CRUDE PRODUCTS, WATER, STEAM, WASTE, STORM WATER NOT CONNECTED WITH HIGHWAY
9 DRAINAGE OR ANY OTHER SIMILAR COMMODITY, INCLUDING A FIRE OR POLICE SIGNAL
10 SYSTEM OR STREET LIGHTING SYSTEM, THAT DIRECTLY OR INDIRECTLY SERVES THE
11 PUBLIC.

12 28-7702. Arizona new directions in innovation program;
13 authority of department; expenses

14 A. IN COOPERATION WITH REGIONAL PLANNING AGENCIES, METROPOLITAN
15 PLANNING ORGANIZATIONS AND COUNCILS OF GOVERNMENTS IN THIS STATE, THE
16 DEPARTMENT SHALL ESTABLISH THE ARIZONA NEW DIRECTIONS IN INNOVATION PROGRAM
17 FOR THE PLANNING, ACQUISITION, FINANCING, DEVELOPMENT, DESIGN, CONSTRUCTION,
18 RECONSTRUCTION, REPLACEMENT, IMPROVEMENT, MAINTENANCE, MANAGEMENT, REPAIR,
19 LEASING AND OPERATION OF TRANSPORTATION PROJECTS. IN COOPERATION WITH THE
20 REGIONAL PLANNING AGENCIES IN COUNTIES WITH A POPULATION OF MORE THAN FIVE
21 HUNDRED THOUSAND PERSONS, THE DEPARTMENT SHALL:

- 22 1. DEVELOP AN EXPEDITED TRANSPORTATION PROJECT DELIVERY PROCESS.
23 2. MAXIMIZE INNOVATION RELATED TO TRANSPORTATION.
24 3. DEVELOP PARTNERSHIPS WITH PRIVATE ENTITIES AND UNITS OF GOVERNMENT.

25 B. AS PART OF THE PROGRAM ESTABLISHED UNDER THIS CHAPTER, THE
26 DEPARTMENT:

- 27 1. MAY SOLICIT CONCEPTS OR PROPOSALS FOR TRANSPORTATION PROJECTS FROM
28 PRIVATE ENTITIES AND UNITS OF GOVERNMENT AS PRESCRIBED IN SECTION 28-7703.

1 2. SHALL ACCEPT UNSOLICITED CONCEPTS OR PROPOSALS FOR TRANSPORTATION
2 PROJECTS FROM PRIVATE ENTITIES AND UNITS OF GOVERNMENT THAT MEET THE
3 REQUIREMENTS OF SECTION 28-7704.

4 3. SHALL EVALUATE THE CONCEPTS OR PROPOSALS AS PRESCRIBED IN SECTIONS
5 28-7703 AND 28-7704 IN COOPERATION WITH THE REGIONAL PLANNING AGENCY OR
6 COUNCIL OF GOVERNMENTS OF THE AFFECTED JURISDICTION.

7 4. IN COOPERATION WITH THE REGIONAL PLANNING AGENCY OR THE COUNCIL OF
8 GOVERNMENTS OF THE AFFECTED JURISDICTION, SELECT POTENTIAL TRANSPORTATION
9 PROJECTS BASED ON THE CONCEPTS OR PROPOSALS FOR PRESENTATION TO THE BOARD.

10 5. MAY CHARGE AN ADMINISTRATIVE FEE FOR THE EVALUATION IN AN AMOUNT
11 DETERMINED BY THE DIRECTOR. ADMINISTRATIVE FEES RECEIVED PURSUANT TO THIS
12 PARAGRAPH SHALL BE DEPOSITED IN THE STATE TRANSPORTATION ENTERPRISE FUND
13 ESTABLISHED BY SECTION 28-7743.

14 6. MAY PAY A STIPEND TO A PROPOSER BASED ON THE DEPARTMENT'S ESTIMATE,
15 IN ITS SOLE DISCRETION, OF THE VALUE OF THE WORK PRODUCT RECEIVED, BUT ONLY
16 IF THE DEPARTMENT HAS DETERMINED THAT THE PROPOSAL SUBMITTED WAS RESPONSIVE
17 TO THE DEPARTMENT'S REQUEST FOR PROPOSALS AND MET ALL REQUIREMENTS
18 ESTABLISHED BY THE DEPARTMENT FOR THE PROJECT. IN EXCHANGE FOR THE STIPEND,
19 THE DEPARTMENT MAY REQUIRE THE RECIPIENT TO GRANT TO THE DEPARTMENT THE RIGHT
20 TO USE ANY WORK PRODUCT CONTAINED IN THE RECIPIENT'S PROPOSAL, INCLUDING
21 TECHNOLOGIES, TECHNIQUES, METHODS, PROCESSES AND INFORMATION CONTAINED IN THE
22 RECIPIENT'S PROJECT DESIGN.

23 C. THE DEPARTMENT MAY PROCURE SERVICES, AWARD AGREEMENTS AND
24 ADMINISTER REVENUES AS AUTHORIZED IN THIS SECTION NOTWITHSTANDING ANY
25 REQUIREMENTS OF ANY OTHER STATE OR LOCAL STATUTE, REGULATION OR LAW RELATING
26 TO PUBLIC BIDDING OR OTHER PROCUREMENT PROCEDURES OR OTHER PROVISIONS
27 OTHERWISE APPLICABLE TO PUBLIC WORKS, SERVICES OR UTILITIES.

28 D. THE DEPARTMENT MAY SPEND MONIES THAT ARE REASONABLY NECESSARY FOR
29 THE DEVELOPMENT OF PROCUREMENTS, EVALUATION OF CONCEPTS OR PROPOSALS,
30 NEGOTIATION OF AGREEMENTS AND IMPLEMENTATION OF AGREEMENTS FOR DEVELOPMENT OR
31 OPERATION OF ELIGIBLE FACILITIES UNDER THIS CHAPTER.

1 E. IN CONNECTION WITH THE EVALUATION OF CONCEPTS OR PROPOSALS FOR
2 TRANSPORTATION PROJECTS, THE DEPARTMENT MAY CONSIDER ANY FINANCING
3 MECHANISMS, INCLUDING THE IMPOSITION AND COLLECTION OF FRANCHISE FEES OR USER
4 FEES AND THE DEVELOPMENT OR USE OF OTHER REVENUE SOURCES.

5 F. THE DEPARTMENT AND ANY OTHER UNIT OF GOVERNMENT MAY SPEND, OUT OF
6 ANY MONIES AVAILABLE FOR THE PURPOSE, MONIES THAT ARE NECESSARY FOR THE
7 EVALUATION OF CONCEPTS OR PROPOSALS FOR TRANSPORTATION PROJECTS AND FOR
8 NEGOTIATING AGREEMENTS FOR TRANSPORTATION PROJECTS PURSUANT TO THIS CHAPTER.
9 THE DEPARTMENT OR OTHER UNIT OF GOVERNMENT MAY EMPLOY ENGINEERS, CONSULTANTS
10 OR OTHER EXPERTS THE DEPARTMENT OR OTHER UNIT OF GOVERNMENT DETERMINES ARE
11 NEEDED FOR THE PURPOSES OF DOING THE EVALUATION AND NEGOTIATION. EXPENSES
12 INCURRED BY THE DEPARTMENT OR OTHER UNIT OF GOVERNMENT UNDER THIS SUBSECTION
13 BEFORE THE ISSUANCE OF TRANSPORTATION PROJECT REVENUE BONDS OR OTHER
14 FINANCING SHALL BE PAID BY THE DEPARTMENT OR OTHER UNIT OF GOVERNMENT, AS
15 APPLICABLE, AND CHARGED TO THE APPROPRIATE TRANSPORTATION PROJECT. ON THE
16 SALE OF TRANSPORTATION PROJECT REVENUE BONDS OR ON OBTAINING OTHER FINANCING
17 FOR ANY TRANSPORTATION PROJECT, THE MONIES SPENT BY THE DEPARTMENT OR OTHER
18 UNIT OF GOVERNMENT UNDER THIS SUBSECTION IN CONNECTION WITH THE PROJECT SHALL
19 BE REPAID TO THE DEPARTMENT OR THE UNIT OF GOVERNMENT FROM THE PROCEEDS OF
20 THE BONDS OR OTHER FINANCING, AS ALLOWED BY APPLICABLE LAW.

21 28-7703. Solicited proposals; authority of department;
22 confidentiality

23 A. IN COOPERATION WITH AN AFFECTED JURISDICTION'S REGIONAL PLANNING
24 AGENCY OR COUNCIL OF GOVERNMENTS, THE DEPARTMENT MAY SOLICIT, RECEIVE,
25 CONSIDER, EVALUATE AND ACCEPT A PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE OR A
26 PUBLIC-PRIVATE AGREEMENT.

27 B. IN SOLICITING AND SELECTING A PRIVATE ENTITY WITH WHICH TO ENTER
28 INTO A PUBLIC-PRIVATE INITIATIVE OR PUBLIC-PRIVATE AGREEMENT, THE DEPARTMENT
29 MAY USE ONE OR MORE OF THE FOLLOWING PROCUREMENT APPROACHES:

30 1. SEALED BIDDING.

1 2. SELECTION OF PROPOSALS, WITH OR WITHOUT NEGOTIATIONS, BASED ON
2 QUALIFICATIONS OR BEST VALUE, OR BOTH.

3 3. ANY COMPETITIVE SELECTION PROCESS THAT THE DEPARTMENT DETERMINES TO
4 BE APPROPRIATE OR REASONABLE.

5 C. THE DEPARTMENT MAY SELECT MULTIPLE PRIVATE ENTITIES WITH WHICH TO
6 ENTER A PUBLIC-PRIVATE INITIATIVE OR A PUBLIC-PRIVATE AGREEMENT FOR A
7 TRANSPORTATION FACILITY IF IT IS IN THE PUBLIC INTEREST.

8 D. THE DEPARTMENT SHALL SELECT A PRIVATE ENTITY OR ENTITIES FOR A
9 PUBLIC-PRIVATE INITIATIVE OR A PUBLIC-PRIVATE AGREEMENT ON A COMPETITIVE
10 BASIS TO THE MAXIMUM EXTENT PRACTICABLE.

11 E. BEFORE THE SUBMISSION OF A SOLICITED PROPOSAL, A PRIVATE ENTITY MAY
12 REQUEST A REVIEW BY THE DEPARTMENT OF INFORMATION THAT THE PRIVATE ENTITY HAS
13 IDENTIFIED AS CONFIDENTIAL OR PROPRIETARY TO DETERMINE WHETHER THE
14 INFORMATION WOULD BE SUBJECT TO DISCLOSURE UNDER TITLE 39, CHAPTER 1.

15 F. A PRIVATE ENTITY MAY IDENTIFY CONFIDENTIAL OR PROPRIETARY
16 INFORMATION SUBMITTED AS PART OF A SOLICITED PROPOSAL. A PRIVATE ENTITY
17 SHALL HAVE AN OPPORTUNITY TO OBJECT TO THE RELEASE OF ANY INFORMATION IT
18 IDENTIFIES AS CONFIDENTIAL OR PROPRIETARY.

19 G. THE DEPARTMENT SHALL REVIEW ANY INFORMATION IDENTIFIED AS
20 CONFIDENTIAL OR PROPRIETARY BY A PRIVATE ENTITY AS PART OF A SOLICITED
21 PROPOSAL AND SHALL DETERMINE IF THE INFORMATION IS EXEMPT FROM DISCLOSURE
22 UNDER TITLE 39, CHAPTER 1.

23 H. THE DEPARTMENT SHALL INFORM THE PRIVATE ENTITY THAT SUBMITTED THE
24 INFORMATION OF ITS DETERMINATION OF WHETHER INFORMATION IDENTIFIED BY THE
25 PRIVATE ENTITY AS CONFIDENTIAL OR PROPRIETARY IS SUBJECT TO DISCLOSURE UNDER
26 TITLE 39, CHAPTER 1.

27 I. THE PRIVATE ENTITY SHALL HAVE THE OPPORTUNITY TO OBJECT TO THE
28 DETERMINATION THAT THE INFORMATION IS SUBJECT TO DISCLOSURE UNDER TITLE 39,
29 CHAPTER 1 OR TO WITHDRAW ITS PROPOSAL.

1 J. ANY INFORMATION DETERMINED BY THE DEPARTMENT TO BE CONFIDENTIAL OR
2 PROPRIETARY IS EXEMPT FROM DISCLOSURE UNDER TITLE 39, CHAPTER 1, EXCEPT TO
3 THE ATTORNEY GENERAL AND TO ANY COUNTY ATTORNEY IN CONNECTION WITH AN
4 INVESTIGATION MADE OR ACTION TAKEN IN THE COURSE OF THEIR OFFICIAL DUTIES.

5 K. ANY INFORMATION NOT DETERMINED TO BE CONFIDENTIAL OR PROPRIETARY
6 MAY BE SUBJECT TO DISCLOSURE UNDER TITLE 39, CHAPTER 1.

7 L. THIS SECTION IS EXEMPT FROM TITLE 41, CHAPTER 23.

8 28-7704. Unsolicited proposals: authority of department:
9 confidentiality

10 A. THE DEPARTMENT MAY RECEIVE, CONSIDER, EVALUATE AND ACCEPT AN
11 UNSOLICITED PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE IF THE PROPOSAL:

12 1. IS INDEPENDENTLY ORIGINATED AND DEVELOPED BY THE PROPOSER.

13 2. BENEFITS THE PUBLIC.

14 3. IS PREPARED WITHOUT DEPARTMENT SUPERVISION.

15 4. INCLUDES SUFFICIENT DETAIL AND INFORMATION FOR THE DEPARTMENT TO
16 EVALUATE THE PROPOSAL IN AN OBJECTIVE AND TIMELY MANNER.

17 B. WITHIN THIRTY DAYS AFTER RECEIVING AN UNSOLICITED PROPOSAL, THE
18 DEPARTMENT SHALL UNDERTAKE A PRELIMINARY EVALUATION OF THE UNSOLICITED
19 PROPOSAL TO DETERMINE IF THE PROPOSAL COMPLIES WITH THE REQUIREMENTS UNDER
20 SUBSECTION A.

21 C. BEFORE THE SUBMISSION OF AN UNSOLICITED PROPOSAL, A PRIVATE ENTITY
22 MAY REQUEST A REVIEW BY THE DEPARTMENT OF INFORMATION THAT THE PRIVATE ENTITY
23 HAS IDENTIFIED AS CONFIDENTIAL OR PROPRIETARY TO DETERMINE WHETHER THE
24 INFORMATION WOULD BE SUBJECT TO DISCLOSURE UNDER TITLE 39, CHAPTER 1.

25 D. THE DEPARTMENT SHALL TAKE APPROPRIATE ACTION TO PROTECT
26 CONFIDENTIAL OR PROPRIETARY INFORMATION THAT A PRIVATE ENTITY PROVIDES AS
27 PART OF AN UNSOLICITED PROPOSAL AND THAT IS EXEMPT FROM DISCLOSURE UNDER
28 TITLE 39, CHAPTER 1.

29 E. IF THE UNSOLICITED PROPOSAL DOES NOT COMPLY WITH SUBSECTION A, THE
30 DEPARTMENT SHALL RETURN THE PROPOSAL WITHOUT FURTHER ACTION.

1 F. IF THE UNSOLICITED PROPOSAL COMPLIES WITH SUBSECTION A, THE
2 DEPARTMENT MAY CONTINUE TO EVALUATE THE PROPOSAL IN ACCORDANCE WITH THIS
3 SECTION.

4 G. IF THE UNSOLICITED PROPOSAL COMPLIES WITH SUBSECTION A, THE
5 DEPARTMENT SHALL ADVERTISE THE UNSOLICITED PROPOSAL FOR THE PURPOSE OF
6 RECEIVING COMPETITIVE PROPOSALS FOR THE SAME PROPOSED TRANSPORTATION
7 FACILITY.

8 H. THE ADVERTISEMENT SHALL OUTLINE THE GENERAL NATURE AND SCOPE OF THE
9 UNSOLICITED PROPOSAL, INCLUDING THE LOCATION OF THE TRANSPORTATION FACILITY
10 AND THE WORK TO BE PERFORMED ON OR IN CONNECTION WITH THE TRANSPORTATION
11 FACILITY AND SHALL SPECIFY AN ADDRESS TO WHICH A COMPETING PROPOSAL MAY BE
12 SUBMITTED.

13 I. THE ADVERTISEMENT SHALL SPECIFY A REASONABLE TIME PERIOD BY WHICH
14 COMPETITORS MUST SUBMIT A COMPETING PROPOSAL TO THE DEPARTMENT.

15 J. THE DEPARTMENT MAY CHARGE A FEE TO BE DETERMINED BY THE DIRECTOR TO
16 PROCESS, REVIEW AND EVALUATE AN UNSOLICITED PROPOSAL AND ANY COMPETING
17 PROPOSALS.

18 K. THE DEPARTMENT SHALL:

19 1. DETERMINE IF ANY COMPETING PROPOSAL IS COMPARABLE IN NATURE AND
20 SCOPE TO THE ORIGINAL UNSOLICITED PROPOSAL.

21 2. EVALUATE THE ORIGINAL UNSOLICITED PROPOSAL AND ANY COMPARABLE
22 COMPETING PROPOSAL.

23 3. CONDUCT ANY GOOD FAITH DISCUSSIONS AND, IF NECESSARY, ANY
24 NEGOTIATIONS CONCERNING EACH QUALIFIED PROPOSAL.

25 L. AFTER EVALUATING THE UNSOLICITED PROPOSAL AND ANY COMPETING
26 PROPOSALS IN COOPERATION WITH THE AFFECTED JURISDICTION'S REGIONAL PLANNING
27 AGENCY OR COUNCIL OF GOVERNMENTS, THE DEPARTMENT MAY:

28 1. ACCEPT THE UNSOLICITED PROPOSAL AND REJECT ANY COMPETING PROPOSALS.

29 2. REJECT THE UNSOLICITED PROPOSAL AND ACCEPT A COMPARABLE COMPETING
30 PROPOSAL IF THE DEPARTMENT DETERMINES THAT THE COMPARABLE COMPETING PROPOSAL
31 IS THE MOST ADVANTAGEOUS TO THE STATE.

1 3. ACCEPT BOTH AN UNSOLICITED PROPOSAL AND A COMPETING PROPOSAL IF
2 ACCEPTING BOTH PROPOSALS IS ADVANTAGEOUS TO THE STATE.

3 4. REJECT THE UNSOLICITED PROPOSAL AND ANY COMPETING PROPOSALS.

4 M. THE DEPARTMENT SHALL RETURN ANY UNSOLICITED PROPOSAL OR COMPETING
5 PROPOSAL THAT IS REJECTED WITHOUT FURTHER ACTION.

6 N. THIS SECTION IS EXEMPT FROM TITLE 41, CHAPTER 23.

7 28-7705. Evaluation criteria for solicited and unsolicited
8 proposals

9 THE DEPARTMENT MAY CONSIDER THE FOLLOWING FACTORS IN EVALUATING AND
10 SELECTING A BID OR PROPOSAL TO ENTER INTO A PUBLIC-PRIVATE INITIATIVE OR A
11 PUBLIC-PRIVATE AGREEMENT:

12 1. THE ABILITY OF THE TRANSPORTATION FACILITY TO IMPROVE SAFETY,
13 REDUCE CONGESTION, INCREASE CAPACITY AND PROMOTE ECONOMIC GROWTH.

14 2. THE PROPOSED COST OF AND FINANCIAL PLAN FOR THE TRANSPORTATION
15 FACILITY.

16 3. THE GENERAL REPUTATION, QUALIFICATIONS, INDUSTRY EXPERIENCE AND
17 FINANCIAL CAPACITY OF THE PRIVATE ENTITY.

18 4. THE PROPOSED DESIGN, OPERATION AND FEASIBILITY OF THE
19 TRANSPORTATION FACILITY.

20 5. COMMENTS FROM LOCAL CITIZENS AND AFFECTED JURISDICTIONS.

21 6. BENEFITS TO THE PUBLIC.

22 7. THE SAFETY RECORD OF THE PRIVATE ENTITY.

23 8. OTHER CRITERIA THAT THE DEPARTMENT DEEMS APPROPRIATE.

24 28-7706. Public-private agreement

25 A. IN COOPERATION WITH THE REGIONAL PLANNING AGENCY OR THE COUNCIL OF
26 GOVERNMENTS OF AN AFFECTED JURISDICTION, THE BOARD MAY SELECT A SOLICITED OR
27 UNSOLICITED PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE OR A PUBLIC-PRIVATE
28 AGREEMENT. BEFORE THE BOARD APPROVES A PROPOSAL, THE JOINT LEGISLATIVE
29 BUDGET COMMITTEE SHALL REVIEW THE PROPOSAL. FOLLOWING A RESOLUTION BY THE
30 BOARD APPROVING THE PROPOSAL FOR A PUBLIC-PRIVATE INITIATIVE OR A PUBLIC-
31 PRIVATE AGREEMENT, THE DEPARTMENT MAY ENTER INTO ANY AGREEMENT OR ANY
32 CONFIGURATION OF AGREEMENTS RELATING TO TRANSPORTATION PROJECTS WITH ANY

1 PRIVATE ENTITY OR UNIT OF GOVERNMENT OR ANY CONFIGURATION OF PRIVATE ENTITIES
2 AND UNITS OF GOVERNMENT. AGREEMENTS ENTERED INTO UNDER THIS SECTION MAY
3 INCLUDE PLANNING, ACQUISITION, FINANCING, DEVELOPMENT, DESIGN, CONSTRUCTION,
4 RECONSTRUCTION, REPLACEMENT, IMPROVEMENT, MAINTENANCE, MANAGEMENT, REPAIR,
5 LEASING AND OPERATION OF TRANSPORTATION PROJECTS.

6 B. THE AGREEMENTS AMONG THE PUBLIC AND PRIVATE SECTOR PARTNERS ENTERED
7 INTO UNDER THIS SECTION MUST SPECIFY AT LEAST THE FOLLOWING:

8 1. REVIEW AND APPROVAL BY THE DEPARTMENT OF THE OPERATOR'S PLANS FOR
9 THE DEVELOPMENT AND OPERATION OF THE TRANSPORTATION FACILITY.

10 2. INSPECTION BY THE DEPARTMENT OF CONSTRUCTION OF OR IMPROVEMENTS TO
11 THE TRANSPORTATION FACILITY.

12 3. MAINTENANCE BY THE OPERATOR OF A POLICY OF LIABILITY INSURANCE OR
13 SELF-INSURANCE.

14 4. THE TERM OF THE AGREEMENT.

15 5. COMPLIANCE WITH APPLICABLE FEDERAL, STATE AND LOCAL LAWS.

16 6. RESOLUTION BY THE BOARD THAT THE TRANSPORTATION PROJECT IS
17 CONSISTENT WITH THE FIVE YEAR TRANSPORTATION FACILITIES CONSTRUCTION PROGRAM
18 DEVELOPED BY THE DIRECTOR PURSUANT TO SECTION 28-6951.

19 7. CERTIFICATION BY THE REGIONAL PLANNING AGENCY OR COUNCIL OF
20 GOVERNMENTS OF AN AFFECTED JURISDICTION THAT THE TRANSPORTATION PROJECT
21 CONFORMS TO ANY APPLICABLE REGIONAL TRANSPORTATION PLANS OR LOCAL
22 TRANSPORTATION SYSTEM PROGRAMS AND AIR QUALITY CONFORMITY STANDARDS.

23 8. THE TYPE OF PROPERTY INTEREST, IF ANY, THE PRIVATE ENTITY WILL HAVE
24 IN THE TRANSPORTATION FACILITY.

25 9. ANY FINANCING MECHANISMS, INCLUDING THE IMPOSITION AND COLLECTION
26 OF FRANCHISE FEES OR USER FEES AND THE DEVELOPMENT OR USE OF OTHER REVENUE
27 SOURCES.

28 10. THE POINT OF ENTRY IN THE TRANSPORTATION PROJECT BY PUBLIC AND
29 PRIVATE SECTOR PARTNERS.

30 11. THE ASSUMPTION OF RESPONSIBILITY FOR SPECIFIC TRANSPORTATION
31 PROJECT ELEMENTS.

1 12. A DESCRIPTION OF THE ACTIONS THE DEPARTMENT MAY TAKE TO ENSURE
2 PROPER MAINTENANCE OF THE TRANSPORTATION FACILITY.

3 13. GROUNDS FOR TERMINATION OF THE PUBLIC-PRIVATE AGREEMENT BY THE
4 DEPARTMENT OR OPERATOR.

5 14. PROCEDURES FOR AMENDMENT OF THE AGREEMENT.

6 15. SHARING OF MANAGEMENT OF THE RISKS OF THE TRANSPORTATION PROJECT.

7 16. APPORTIONMENT OF EXPENSES.

8 17. ALLOCATION OF FINANCIAL RESPONSIBILITY FOR COST OVERRUNS.

9 18. PENALTIES FOR NONPERFORMANCE.

10 19. INCENTIVES FOR PERFORMANCE.

11 20. ACCOUNTING AND AUDITING STANDARDS TO BE USED TO EVALUATE WORK ON
12 THE TRANSPORTATION PROJECT.

13 21. FILING BY THE OPERATOR ON A PERIODIC BASIS OF APPROPRIATE FINANCIAL
14 STATEMENTS IN A FORM ACCEPTABLE TO THE DEPARTMENT.

15 22. FILING BY THE OPERATOR ON A PERIODIC BASIS OF TRAFFIC REPORTS IN A
16 FORM ACCEPTABLE TO THE DEPARTMENT.

17 23. FINANCING OBLIGATIONS OF THE OPERATOR AND THE DEPARTMENT.

18 24. RIGHTS AND DUTIES OF THE OPERATOR, THE DEPARTMENT AND OTHER STATE
19 AND LOCAL GOVERNMENTAL ENTITIES WITH RESPECT TO USE OF THE TRANSPORTATION
20 FACILITY.

21 25. RIGHTS AND REMEDIES AVAILABLE IN THE EVENT OF DEFAULT OR DELAY.

22 26. TERMS AND CONDITIONS OF INDEMNIFICATION OF THE OPERATOR BY THE
23 DEPARTMENT.

24 27. ASSIGNMENT, SUBCONTRACTING OR OTHER DELEGATION OF RESPONSIBILITIES
25 OF THE OPERATOR OR THE DEPARTMENT UNDER THE AGREEMENT TO THIRD PARTIES,
26 INCLUDING OTHER PRIVATE ENTITIES AND OTHER STATE AGENCIES.

27 28. SALE OR LEASE TO THE OPERATOR OF PRIVATE PROPERTY RELATED TO THE
28 TRANSPORTATION FACILITY.

29 29. TRAFFIC ENFORCEMENT AND OTHER POLICING ISSUES, INCLUDING ANY
30 REIMBURSEMENT BY THE PRIVATE ENTITY FOR SUCH SERVICES.

1 30. SPECIFIC TECHNOLOGY TO BE USED IN THE FACILITY.

2 31. COLLECTION OF USER FEES, TOLLS, FARES OR SIMILAR CHARGES.

3 32. ENFORCEMENT OF TOLLS.

4 33. CIRCUMSTANCES UNDER WHICH THE DEPARTMENT MAY RECEIVE A SHARE OF
5 REVENUES FROM CHARGES.

6 34. PROVISIONS THAT ALLOW THE PRIVATE PARTNER ACCESS TO RELEVANT
7 DEPARTMENT DATABASES FOR ENFORCEMENT PURPOSES.

8 35. A REQUIREMENT THAT A PRIVATE PARTNER PROVIDE PERFORMANCE AND
9 PAYMENT BONDS, PARENT COMPANY GUARANTEES, LETTERS OF CREDIT OR OTHER
10 ACCEPTABLE FORM OF SECURITY OR A COMBINATION OF ANY OF THESE TO ADEQUATELY
11 PROTECT THIS STATE.

12 36. A FORMULA FOR THE ADJUSTMENT OF USER FEES, TOLLS, FARES OR SIMILAR
13 CHARGES DURING THE TERM OF THE AGREEMENT.

14 37. FOR AN AGREEMENT THAT DOES NOT INCLUDE A FORMULA, PROVISIONS
15 REGULATING THE PRIVATE PARTNER'S RETURN ON INVESTMENT.

16 38. OTHER TERMS AND CONDITIONS.

17 B. THE DEPARTMENT MAY NOT ENTER INTO, AND THE BOARD MAY NOT APPROVE,
18 AN AGREEMENT UNDER THIS SECTION FOR THE CONSTRUCTION OF A PUBLIC IMPROVEMENT
19 AS PART OF A TRANSPORTATION PROJECT UNLESS THE AGREEMENT PROVIDES FOR
20 BONDING, FINANCIAL GUARANTEES, DEPOSITS OR POSTING OF OTHER SECURITY TO
21 SECURE THE PAYMENT OF LABORERS, SUBCONTRACTORS AND SUPPLIERS THAT PERFORM
22 WORK OR PROVIDE MATERIALS AS PART OF THE TRANSPORTATION PROJECT.

23 C. BEFORE PRESENTING AN AGREEMENT TO THE BOARD FOR APPROVAL UNDER THIS
24 SECTION, THE DEPARTMENT MUST CONSIDER WHETHER TO IMPLEMENT PROCEDURES TO
25 PROMOTE COMPETITION AMONG SUBCONTRACTORS FOR ANY SUBCONTRACTS TO BE LET IN
26 CONNECTION WITH THE TRANSPORTATION PROJECT. AS PART OF ITS REQUEST FOR
27 APPROVAL OF THE AGREEMENT, THE DEPARTMENT SHALL REPORT IN WRITING TO THE
28 BOARD ITS CONCLUSIONS REGARDING THE APPROPRIATENESS OF IMPLEMENTING THOSE
29 PROCEDURES.

30 D. EXCEPT AS PROVIDED IN SUBSECTION E, DOCUMENTS, COMMUNICATIONS AND
31 INFORMATION DEVELOPED, EXCHANGED OR COMPILED IN THE COURSE OF NEGOTIATING AN

1 AGREEMENT WITH A PRIVATE ENTITY UNDER THIS SECTION ARE EXEMPT FROM
2 DISCLOSURE.

3 E. DOCUMENTS, COMMUNICATIONS OR INFORMATION ARE SUBJECT TO DISCLOSURE
4 IF THE DOCUMENTS, COMMUNICATIONS OR INFORMATION ARE SUBMITTED TO THE BOARD IN
5 CONNECTION WITH ITS REVIEW AND APPROVAL OF A TRANSPORTATION PROJECT UNDER
6 SUBSECTION F.

7 F. THE TERMS OF A FINAL AGREEMENT ENTERED INTO UNDER THIS SECTION AND
8 THE TERMS OF A PROPOSED AGREEMENT PRESENTED TO THE BOARD FOR REVIEW AND
9 APPROVAL ARE SUBJECT TO DISCLOSURE.

10 G. AGREEMENTS MAY BE FOR A TERM NOT TO EXCEED FIFTY YEARS BUT MAY BE
11 EXTENDED FOR ADDITIONAL TERMS.

12 H. THE DEPARTMENT MAY APPROVE ANY REQUEST FROM ANOTHER UNIT OF
13 GOVERNMENT TO DEVELOP A TRANSPORTATION FACILITY IN A MANNER SIMILAR TO THAT
14 USED BY THE DEPARTMENT UNDER THIS CHAPTER.

15 28-7707. Funding and financing

16 A. ANY LAWFUL SOURCE OF FUNDING MAY BE USED FOR THE DEVELOPMENT OR
17 OPERATION OF A TRANSPORTATION FACILITY UNDER THIS CHAPTER, INCLUDING:

18 1. THE PROCEEDS OF GRANT ANTICIPATION REVENUE BONDS AUTHORIZED BY 23
19 UNITED STATES CODE SECTION 122 OR ANY OTHER APPLICABLE FEDERAL OR STATE LAW.

20 2. GRANTS, LOANS, LOAN GUARANTEES, LINES OF CREDIT, REVOLVING LINES OF
21 CREDIT OR OTHER ARRANGEMENTS AVAILABLE UNDER THE TRANSPORTATION
22 INFRASTRUCTURE FINANCE AND INNOVATION ACT OF 1998 (P.L. 105-178; 112 STAT.
23 241; 23 UNITED STATES CODE SECTIONS 601 THROUGH 610) OR ANY OTHER FEDERAL OR
24 STATE LAW.

25 3. FEDERAL, STATE OR LOCAL REVENUES.

26 4. USER FEES, TOLLS, FARES, CHARGES, LEASE PROCEEDS, RENTS,
27 AVAILABILITY PAYMENTS, GROSS OR NET RECEIPTS FROM SALES, PROCEEDS FROM THE
28 SALE OF DEVELOPMENT RIGHTS, FRANCHISE FEES, PERMIT FEES OR ANY OTHER LAWFUL
29 FORM OF CONSIDERATION.

30 5. PRIVATE ACTIVITY BONDS AS DESCRIBED BY 26 UNITED STATES CODE
31 SECTION 141 AND OTHER FORMS OF PRIVATE CAPITAL.

1 6. OTHER FORMS OF PUBLIC AND PRIVATE CAPITAL THAT ARE AVAILABLE.

2 B. AS SECURITY FOR THE PAYMENT OF FINANCING DESCRIBED IN THIS SECTION,
3 THE REVENUES FROM THE PROJECT MAY BE PLEDGED, BUT NO PLEDGE OF REVENUES
4 CONSTITUTES IN ANY MANNER OR TO ANY EXTENT A GENERAL OBLIGATION OF THIS
5 STATE. ANY FINANCING MAY BE STRUCTURED ON A SENIOR, PARITY OR SUBORDINATE
6 BASIS TO ANY OTHER FINANCING.

7 C. THE DEPARTMENT MAY ISSUE TOLL REVENUE BONDS TO PROVIDE MONIES FOR
8 ANY PROJECT UNDER THIS CHAPTER.

9 D. THE DEPARTMENT MAY ACCEPT FROM THE UNITED STATES OR ANY OF ITS
10 AGENCIES MONIES THAT ARE AVAILABLE TO THIS STATE OR TO ANY OTHER UNIT OF
11 GOVERNMENT FOR CARRYING OUT THE PURPOSES OF THIS CHAPTER, WHETHER THE MONIES
12 ARE MADE AVAILABLE BY GRANT, LOAN OR OTHER FINANCING ARRANGEMENT. THE
13 DEPARTMENT MAY ENTER INTO AGREEMENTS AND OTHER ARRANGEMENTS WITH THE UNITED
14 STATES OR ANY OF ITS AGENCIES AS MAY BE NECESSARY, PROPER AND CONVENIENT FOR
15 CARRYING OUT THIS CHAPTER.

16 E. THE DEPARTMENT MAY ACCEPT FROM ANY SOURCE ANY GRANT, DONATION, GIFT
17 OR OTHER FORM OF CONVEYANCE OF LAND, MONEY, OTHER REAL OR PERSONAL PROPERTY
18 OR OTHER VALUABLE THING MADE TO THIS STATE, THE DEPARTMENT OR A LOCAL
19 GOVERNMENT FOR CARRYING OUT THIS CHAPTER.

20 F. ANY TRANSPORTATION FACILITY MAY BE FUNDED IN WHOLE OR IN PART BY
21 CONTRIBUTION OF ANY MONIES OR PROPERTY MADE BY ANY PRIVATE ENTITY OR PUBLIC
22 SECTOR PARTNER THAT IS A PARTY TO ANY AGREEMENT ENTERED INTO UNDER THIS
23 CHAPTER.

24 G. NOTWITHSTANDING ANY OTHER LAW, FEDERAL, STATE AND LOCAL MONIES MAY
25 BE COMBINED WITH ANY PRIVATE SECTOR MONIES FOR ANY PROJECT PURPOSES.

26 H. REVENUE BONDS ISSUED PURSUANT TO THIS CHAPTER ARE NOT GENERAL
27 OBLIGATIONS OF THIS STATE AND ARE NOT SECURED BY OR PAYABLE FROM ANY MONIES
28 OR ASSETS OF THIS STATE OTHER THAN THE MONIES AND REVENUES SPECIFICALLY
29 PLEDGED TO THE REPAYMENT OF THE REVENUE BONDS.

30 28-7708. Government agreements

31 EITHER SEPARATELY OR IN COMBINATION WITH ANY OTHER PUBLIC SECTOR
32 PARTNER, THIS STATE MAY ENTER INTO WORKING AGREEMENTS, COORDINATION

1 AGREEMENTS OR SIMILAR IMPLEMENTATION AGREEMENTS, INCLUDING THE FORMATION OF
2 MULTISTATE TRANSPORTATION ORGANIZATIONS, TO CARRY OUT THE JOINT
3 IMPLEMENTATION OF A TRANSPORTATION PROJECT UNDER THIS CHAPTER.

4 28-7709. Eminent domain

5 A. THIS STATE MAY EXERCISE THE POWER OF EMINENT DOMAIN TO ACQUIRE
6 PROPERTY, RIGHTS-OF-WAY OR OTHER RIGHTS IN PROPERTY FOR PROJECTS THAT ARE
7 NECESSARY TO DEVELOP, OPERATE OR HOLD A TRANSPORTATION FACILITY UNDER THIS
8 CHAPTER, REGARDLESS OF WHETHER THE PROPERTY WILL BE OWNED IN FEE SIMPLE BY
9 THIS STATE OR WHETHER THE PROPERTY WILL BE LEASED TO THE PRIVATE PARTNER TO
10 USE, LEASE OR OPERATE FOR ITS BUSINESS PURPOSES IN CONNECTION WITH THE
11 PUBLIC-PRIVATE PARTNERSHIP PROJECT.

12 B. THIS STATE SHALL NOT RELINQUISH ITS POWER OF EMINENT DOMAIN
13 AUTHORITY.

14 28-7710. Material default; remedies

15 A. ON THE OCCURRENCE AND DURING THE CONTINUATION OF MATERIAL DEFAULT
16 BY AN OPERATOR, NOT RELATED TO AN EVENT OF FORCE MAJEURE, THE DEPARTMENT MAY
17 DO EITHER OF THE FOLLOWING:

18 1. ELECT TO TAKE OVER THE TRANSPORTATION FACILITY, INCLUDING THE
19 SUCCESSION TO ALL RIGHTS, TITLE AND INTEREST IN THE TRANSPORTATION FACILITY,
20 SUBJECT TO ANY LIENS ON REVENUES PREVIOUSLY GRANTED BY THE PRIVATE ENTITY.

21 2. TERMINATE THE PUBLIC-PRIVATE AGREEMENT AND EXERCISE ANY OTHER
22 RIGHTS AND REMEDIES THAT MAY BE AVAILABLE.

23 B. IF THE DEPARTMENT ELECTS TO TAKE OVER A TRANSPORTATION FACILITY
24 UNDER SUBSECTION A OF THIS SECTION, THE DEPARTMENT:

25 1. SHALL COLLECT AND PAY ANY REVENUES THAT ARE SUBJECT TO LIEN TO
26 SATISFY ANY OBLIGATION.

27 2. MAY DEVELOP AND OPERATE THE TRANSPORTATION FACILITY, IMPOSE USER
28 FEES FOR THE USE OF THE TRANSPORTATION FACILITY AND COMPLY WITH ANY SERVICE
29 CONTRACTS.

30 3. MAY SOLICIT PROPOSALS FOR THE MAINTENANCE AND OPERATION OF THE
31 TRANSPORTATION FACILITY UNDER SECTION 28-7703.

1 28-7711. Reversion of transportation facility to the department

2 IF THE PUBLIC-PRIVATE AGREEMENT TERMINATES, THE AUTHORITY AND DUTIES OF
3 THE OPERATOR CEASE, EXCEPT FOR ANY DUTIES AND OBLIGATIONS THAT EXTEND BEYOND
4 THE TERMINATION AS PROVIDED IN THE PUBLIC-PRIVATE AGREEMENT, AND THE
5 TRANSPORTATION FACILITY REVERTS TO THE DEPARTMENT AND SHALL BE DEDICATED TO
6 THE DEPARTMENT FOR PUBLIC USE.

7 28-7712. Reports to board

8 A. THE DEPARTMENT SHALL REPORT TO THE BOARD AT LEAST TWICE DURING EACH
9 YEAR REGARDING THE TRANSPORTATION PROJECTS PROPOSED OR AGREED TO UNDER THIS
10 CHAPTER.

11 B. THE REPORT UNDER SUBSECTION A SHALL INCLUDE INFORMATION ABOUT
12 EXPENDITURE OF MONIES FOR EVALUATION OF CONCEPTS AND PROPOSALS FOR
13 TRANSPORTATION PROJECTS, AGREEMENTS ENTERED INTO, TRANSPORTATION PROJECTS
14 THAT HAVE BEEN AGREED TO AND FINANCING MECHANISMS BEING USED FOR
15 TRANSPORTATION PROJECTS.

16 28-7713. Police powers; violations of law

17 A. ALL LAW ENFORCEMENT OFFICERS OF THIS STATE AND OF AN AFFECTED
18 JURISDICTION HAVE THE SAME POWERS AND JURISDICTION WITHIN THE LIMITS OF THE
19 TRANSPORTATION FACILITY AS THEY HAVE IN THEIR RESPECTIVE AREAS OF
20 JURISDICTION AND ACCESS TO THE TRANSPORTATION FACILITY AT ANY TIME FOR THE
21 PURPOSE OF EXERCISING THE POWERS AND JURISDICTION.

22 B. THE TRAFFIC AND MOTOR VEHICLE LAWS OF THIS STATE OR, IF APPLICABLE,
23 ANY AFFECTED JURISDICTION SHALL BE THE SAME ON THE TRANSPORTATION FACILITY AS
24 THOSE LAWS APPLIED TO CONDUCT ON SIMILAR TRANSPORTATION FACILITIES IN THIS
25 STATE OR AFFECTED JURISDICTION.

26 C. PUNISHMENT FOR VIOLATIONS OF TRAFFIC AND MOTOR VEHICLE LAWS OF THIS
27 STATE OR, IF APPLICABLE, ANY AFFECTED JURISDICTION ON THE TRANSPORTATION
28 FACILITY SHALL BE AS PRESCRIBED BY LAW FOR CONDUCT OCCURRING ON SIMILAR
29 TRANSPORTATION FACILITIES IN THIS STATE OR AFFECTED JURISDICTION.

30 28-7714. Program termination

31 THE PROGRAM ESTABLISHED BY THIS CHAPTER ENDS ON JULY 1, 2018 PURSUANT
32 TO SECTION 41-3102.

ARTICLE 2. FINANCING

28-7741. Bonds secured by state transportation enterprise fund:
financing of transportation projects

A. IN ADDITION TO ANY AUTHORITY THE DEPARTMENT HAS TO ISSUE AND SELL BONDS AND OTHER SIMILAR OBLIGATIONS, THIS SECTION ESTABLISHES CONTINUING AUTHORITY FOR THE ISSUANCE AND SALE OF BONDS AND OTHER SIMILAR OBLIGATIONS IN A MANNER CONSISTENT WITH THIS SECTION. TO FINANCE ANY TRANSPORTATION PROJECT IN WHOLE OR IN PART, THE DEPARTMENT MAY ISSUE REVENUE BONDS. THE BONDS SHALL BE SECURED BY A PLEDGE OF, AND A LIEN ON, AND SHALL BE PAYABLE ONLY FROM, MONIES IN THE STATE TRANSPORTATION ENTERPRISE FUND ESTABLISHED BY SECTION 28-7743 AND ANY OTHER REVENUES SPECIFICALLY PLEDGED TO REPAYMENT OF THE BONDS. A PLEDGE BY THE DEPARTMENT OF ITS REVENUES CREATES A LIEN THAT IS VALID AND BINDING FROM THE TIME THE PLEDGE IS MADE. REVENUE BONDS ISSUED PURSUANT TO THIS SECTION ARE NOT GENERAL OBLIGATIONS OF THIS STATE AND ARE NOT SECURED BY OR PAYABLE FROM ANY MONIES OR ASSETS OF THIS STATE OTHER THAN THE MONIES AND REVENUES SPECIFICALLY PLEDGED TO THE REPAYMENT OF THE REVENUE BONDS.

B. MONIES RECEIVED FROM THE ISSUANCE OF REVENUE BONDS OR OTHER DEBT OBLIGATIONS, INCLUDING ANY INVESTMENT EARNINGS, MAY BE SPENT:

1. FOR THE PURPOSE OF FINANCING THE COSTS OF THE TRANSPORTATION PROJECT FOR WHICH THE BONDS ARE ISSUED.

2. TO PAY THE COSTS AND OTHER ADMINISTRATIVE EXPENSES OF THE BONDS.

3. TO PAY THE COSTS OF CREDIT ENHANCEMENT OR TO FUND ANY RESERVES DETERMINED TO BE NECESSARY OR ADVANTAGEOUS IN CONNECTION WITH THE REVENUE BONDS.

4. TO REIMBURSE THE DEPARTMENT FOR ANY COSTS RELATED TO CARRYING OUT THE PURPOSES OF THE PROGRAM ESTABLISHED UNDER THIS CHAPTER.

C. ANY TRANSPORTATION PROJECT MAY BE FINANCED IN WHOLE OR IN PART WITH:

1. THE PROCEEDS OF GRANT ANTICIPATION REVENUE BONDS AUTHORIZED BY 23 UNITED STATES CODE SECTION 122 AND APPLICABLE STATE LAW.

1 2. GRANTS, LOANS, LOAN GUARANTEES, LINES OF CREDIT, REVOLVING LINES OF
2 CREDIT OR OTHER FINANCING ARRANGEMENTS AVAILABLE PURSUANT TO THE
3 TRANSPORTATION INFRASTRUCTURE FINANCE AND INNOVATION ACT OF 1998
4 (P.L. 105-178; 112 STAT. 241; 23 UNITED STATES CODE SECTIONS 601 THROUGH 610)
5 OR ANY OTHER APPLICABLE FEDERAL LAW.

6 3. INFRASTRUCTURE LOANS OR ASSISTANCE FROM THE HIGHWAY EXPANSION AND
7 EXTENSION LOAN PROGRAM FUND ESTABLISHED BY SECTION 28-7674.

8 4. PRIVATE ACTIVITY BONDS AS DESCRIBED BY 26 UNITED STATES CODE
9 SECTION 141 AND OTHER FORMS OF PRIVATE CAPITAL.

10 D. AS SECURITY FOR THE PAYMENT OF FINANCING DESCRIBED IN SUBSECTION C
11 OF THIS SECTION, THE REVENUES FROM THE TRANSPORTATION PROJECT MAY BE PLEDGED,
12 BUT NO PLEDGE OF REVENUES CONSTITUTES IN ANY MANNER OR TO ANY EXTENT A
13 GENERAL OBLIGATION OF THIS STATE. ANY FINANCING DESCRIBED IN SUBSECTION C OF
14 THIS SECTION MAY BE STRUCTURED ON A SENIOR, PARITY OR SUBORDINATE BASIS TO
15 ANY OTHER FINANCING.

16 28-7742. Use of monies in highway expansion and extension loan
17 program fund for projects

18 NOTWITHSTANDING CHAPTER 21, ARTICLE 5 OF THIS TITLE, THE DEPARTMENT MAY
19 USE MONIES IN THE HIGHWAY EXPANSION AND EXTENSION LOAN PROGRAM FUND
20 ESTABLISHED BY SECTION 28-7674 TO ENSURE THE REPAYMENT OF LOAN GUARANTEES OR
21 EXTENSIONS OF CREDIT MADE TO OR ON BEHALF OF PRIVATE ENTITIES ENGAGED IN THE
22 PLANNING, ACQUISITION, FINANCING, DEVELOPMENT, DESIGN, CONSTRUCTION,
23 RECONSTRUCTION, REPLACEMENT, IMPROVEMENT, MAINTENANCE, MANAGEMENT, REPAIR,
24 LEASING OR OPERATION OF ANY TRANSPORTATION PROJECT THAT IS PART OF THE
25 PROGRAM ESTABLISHED UNDER THIS CHAPTER.

26 28-7743. State transportation enterprise fund

27 A. THE STATE TRANSPORTATION ENTERPRISE FUND IS ESTABLISHED CONSISTING
28 OF:

29 1. PROCEEDS FROM BONDS OR OTHER FINANCING INSTRUMENTS ISSUED UNDER
30 THIS CHAPTER.

1 2. REVENUES RECEIVED FROM ANY TRANSPORTATION PROJECT DEVELOPED UNDER
2 THIS CHAPTER.

3 3. ANY OTHER MONIES THAT ARE BY DONATION, GRANT, CONTRACT, LAW OR
4 OTHER MEANS TRANSFERRED, ALLOCATED OR APPROPRIATED TO THE FUND.

5 B. THE DEPARTMENT SHALL ADMINISTER THE FUND. MONIES IN THE STATE
6 TRANSPORTATION ENTERPRISE FUND ARE CONTINUOUSLY APPROPRIATED TO THE
7 DEPARTMENT FOR THE PURPOSE OF CARRYING OUT THIS CHAPTER AND IMPLEMENTING ALL
8 OR PORTIONS OF ANY TRANSPORTATION PROJECT DEVELOPED UNDER THE PROGRAM
9 ESTABLISHED UNDER THIS CHAPTER.

10 C. ON NOTICE FROM THE DEPARTMENT, THE STATE TREASURER SHALL INVEST AND
11 DIVEST MONIES IN THE FUND AS PROVIDED BY SECTION 35-313, AND MONIES EARNED
12 FROM INVESTMENT SHALL BE CREDITED TO THE FUND.

13 D. THE DEPARTMENT SHALL ESTABLISH A SEPARATE ACCOUNT IN THE STATE
14 TRANSPORTATION ENTERPRISE FUND FOR EACH TRANSPORTATION PROJECT THAT IS
15 UNDERTAKEN PURSUANT TO THIS CHAPTER. THE DEPARTMENT MAY PLEDGE MONIES IN THE
16 STATE TRANSPORTATION ENTERPRISE FUND TO SECURE REVENUE BONDS OR ANY OTHER
17 DEBT OBLIGATIONS RELATING TO THE TRANSPORTATION PROJECT FOR WHICH THE ACCOUNT
18 IS ESTABLISHED.

19 E. MONIES IN AN ACCOUNT ESTABLISHED UNDER SUBSECTION D OF THIS SECTION
20 SHALL BE USED AS PROVIDED IN ANY AGREEMENT APPLICABLE TO THE TRANSPORTATION
21 PROJECT FOR WHICH THE ACCOUNT IS ESTABLISHED.

22 ARTICLE 3. TAXES AND IMMUNITY

23 28-7761. Property tax exemption

24 A. THIS CHAPTER APPLIES TO A TRANSPORTATION FACILITY OR TANGIBLE
25 PERSONAL PROPERTY USED EXCLUSIVELY WITH A TRANSPORTATION FACILITY SUBJECT TO
26 THIS CHAPTER THAT IS EITHER:

27 1. OWNED BY THE DEPARTMENT AND LEASED, LICENSED, FINANCED OR OTHERWISE
28 CONVEYED TO AN OPERATOR.

29 2. ACQUIRED, CONSTRUCTED OR OTHERWISE PROVIDED BY AN OPERATOR ON
30 BEHALF OF THE DEPARTMENT.

1 B. PROPERTY LISTED UNDER SUBSECTION A IS EXEMPT FROM ALL AD VALOREM
2 PROPERTY TAXES AND SPECIAL ASSESSMENTS LEVIED AGAINST PROPERTY BY THIS STATE
3 OR ANY POLITICAL SUBDIVISION OF THIS STATE.

4 28-7762. Sovereign immunity

5 NOTHING IN THIS CHAPTER SHALL BE CONSTRUED OR DEEMED TO LIMIT ANY
6 WAIVER OF THE SOVEREIGN IMMUNITY OF THIS STATE OR ANY OFFICER OR EMPLOYEE OF
7 THIS STATE WITH RESPECT TO THE PARTICIPATION IN OR APPROVAL OF ALL OR ANY
8 PART OF THE TRANSPORTATION FACILITY OR ITS OPERATION.

9 Sec. 8. Section 28-8202, Arizona Revised Statutes, is amended to read:

10 28-8202. State aviation fund; report

11 A. A state aviation fund is established consisting of the following:

12 1. Aviation fuel taxes or motor vehicle fuel taxes deposited by the
13 department.

14 2. Monies deposited by the department as a result of the sale of an
15 abandoned aircraft as defined in section 28-8243 or seized aircraft.

16 3. The amount of flight property tax that the department of revenue
17 has deposited pursuant to section 42-14255.

18 4. Registration fees, license taxes and penalties collected pursuant
19 to article 4 of this chapter.

20 5. Monies received by the department from the operation of airports
21 under this article and articles 2 through 5 of this chapter.

22 B. On notice from the department, the state treasurer shall invest and
23 divest monies in the state aviation fund as provided by section 35-313, and
24 monies earned from investment shall be credited to the fund.

25 C. The department shall administer monies that are appropriated by the
26 legislature from the state aviation fund.

27 D. The board shall distribute monies appropriated to the department
28 from the state aviation fund for planning, design, development, acquisition
29 of interests in land, construction and improvement of publicly owned and
30 operated airport facilities in counties and incorporated cities and towns AND
31 ON INDIAN NATION LAND. The board shall distribute these monies according to
32 the needs for these facilities as determined by the board. No more than ten

per cent of the ~~total aviation fund~~ AVERAGE ANNUAL REVENUE THAT THE FUND RECEIVED FOR THE PAST THREE YEARS may be awarded to any one airport in GRANTS OR LOANS IN any fiscal year. AFTER AND IN ADDITION TO THE INITIAL GRANTS, IN THE SAME FISCAL YEAR THE BOARD MAY AWARD TO ANY ONE AIRPORT AN ADDITIONAL GRANT OR LOAN OF UP TO FIVE PER CENT OF THE AVERAGE ANNUAL REVENUE THAT THE FUND RECEIVED FOR THE PAST THREE YEARS. For THE purposes of this subsection, "publicly owned and operated airport facility" means an airport and appurtenant facilities in which one or more agencies, departments or instrumentalities of this state or a city, town or county of this state OR INDIAN NATION LOCATED IN THIS STATE holds an interest in the land on which the airport is located that is clear of any reversionary interest, lien, easement, lease or other encumbrance that might preclude or interfere with the possession, use or control of the land for public airport purposes for a minimum period of twenty years.

Sec. 9. Section 35-701, Arizona Revised Statutes, is amended effective from and after August 31, 2008, to read:

35-701. Definitions

In this chapter, unless the context otherwise requires:

1. "Corporation" means any corporation organized as an authority as provided in this chapter.

2. "Designated area" means any area of this state which is either designated pursuant to section 36-1479 as a slum or blighted area as defined in section 36-1471, designated by regulation as a pocket of poverty or a neighborhood strategy area by the United States department of housing and urban development pursuant to title I of the housing and community development act of 1977 (P.L. 95-128; 42 United States Code sections 5301 through 5320), as amended, and the department of housing and urban development act (P.L. 89-174; 42 United States Code section 3535(d)) or designated by the United States department of housing and urban development as an empowerment or enterprise zone pursuant to the federal omnibus budget reconciliation act of 1993 (P.L. 103-66; 26 United States Code section

1 1391(g)) or an area certified as an enterprise zone pursuant to section
2 41-1524, subsection B.

3 3. "Governing body" means:

4 (a) The board or body in which the general legislative powers of the
5 municipality or the county are vested.

6 (b) The Arizona board of regents with respect to a corporation formed
7 with the permission of the Arizona board of regents.

8 4. "Income" means gross earnings from wages, salary, commissions,
9 bonuses or tips from all jobs, net earnings from such person's or family's
10 own nonfarm business, professional practice or partnership, and net earnings
11 from such person's or family's own farm. Income includes income, other than
12 earnings, that consists of amounts received from social security or railroad
13 retirement, interest, dividends, veterans payments, pensions and other
14 regular payments, public assistance or welfare payments, including aid for
15 dependent children, old age assistance, general assistance and aid to the
16 blind or totally disabled, but excluding separate payments for hospital or
17 other medical care.

18 5. "Manufactured house" means a structure that is manufactured in a
19 factory after June 15, 1976, that is delivered to a homesite in more than one
20 section and that is placed on a permanent foundation. The dimensions of the
21 completed house shall not be less than twenty feet by forty feet, the roof
22 must be sloping, the siding and roofing must be the same as those found in
23 site-built houses and the house must be eligible for thirty year real estate
24 mortgage financing.

25 6. "Municipality" or "county" means the Arizona board of regents or
26 any incorporated city or town, including charter cities, or any county in
27 this state in which a corporation may be organized and in which it is
28 contemplated the corporation will function.

29 7. "Persons of low and moderate income" means, for the purposes of
30 financing owner-occupied single family dwelling units in areas which the
31 municipality has found, pursuant to section 36-1479, to be slum or blighted
32 areas, as defined in section 36-1471, persons and families whose income does

1 not exceed two and one-half times the median family income of this state. In
2 all other areas it means persons and families whose income does not exceed
3 one and one-half times the median family income of this state.

4 8. "Project" means any land, any building or any other improvement and
5 all real and personal properties, including machinery and equipment whether
6 or not now in existence or under construction and whether located within or
7 without this state or the municipality or county approving the formation of
8 the corporation, that are suitable for any of the following:

9 (a) With respect to a corporation formed with the permission of a
10 municipality or county other than the Arizona board of regents:

11 (i) Any enterprise for the manufacturing, processing or assembling of
12 any agricultural or manufactured products.

13 (ii) Any commercial enterprise for the storing, warehousing,
14 distributing or selling of products of agriculture, mining or industry, or of
15 processes related thereto, including research and development.

16 (iii) Any office building or buildings for use as corporate or company
17 headquarters or regional offices or the adaptive use for offices of any
18 building within this state that is on the national register of historic
19 places or rehabilitation of residential buildings located in registered
20 historic neighborhoods.

21 (iv) A health care institution as defined in section 36-401.

22 (v) Residential real property for dwelling units located within the
23 municipality or county approving the formation of the corporation and, in the
24 case of a county, whether or not also within a municipality that is within
25 the county.

26 (vi) Repairing or rehabilitating single family dwelling units or
27 constructing or repairing residential fences and walls.

28 (vii) Convention or trade show facilities.

29 (viii) Airports, docks, wharves, mass commuting facilities, parking
30 facilities or storage or training facilities directly related to any of the
31 facilities as provided in this item.

1 (ix) Sewage or solid waste disposal facilities or facilities for the
2 furnishing of electric energy, gas or water.

3 (x) Industrial park facilities.

4 (xi) Air or water pollution control facilities.

5 (xii) Any educational institution that is operated by a nonprofit
6 educational organization that is exempt from taxation under section 501(c)(3)
7 of the United States internal revenue code and that is not otherwise funded
8 by state monies, any educational institution or organization that is
9 established under title 15, chapter 1, article 8 and that is owned by a
10 nonprofit organization, any private nonsectarian school or any private
11 nonsectarian organization established for the purpose of funding a joint
12 technological education school district.

13 (xiii) Research and development facilities.

14 (xiv) Commercial enterprises, including facilities for office,
15 recreational, hotel, motel and service uses if the facilities authorized by
16 this item are to be located in a designated area.

17 (xv) A child welfare agency, as defined in section 8-501, owned and
18 operated by a nonprofit organization.

19 (xvi) A transportation facility constructed or operated pursuant to
20 title 28, chapter 22, ~~article 1 or 2~~.

21 (xvii) A museum operated by a nonprofit organization.

22 (xviii) Facilities owned or operated by a nonprofit organization
23 described in section 501(c) of the United States internal revenue code of
24 1986.

25 (xix) New or existing correctional facilities within this state.

26 (b) With respect to a corporation formed with the permission of the
27 Arizona board of regents, any facility consisting of classrooms, lecture
28 halls or conference centers or any facility for research and development or
29 for manufacturing, processing, assembling, marketing, storing and
30 transferring items developed through or connected with research and
31 development or in which the results of such research and development are

1 utilized, but only if the facility is located in an area designated as a
2 research park by the Arizona board of regents.

3 9. "Property" means any land, improvements thereon, buildings and any
4 improvements thereto, machinery and equipment of any and all kinds necessary
5 to a project and any other personal properties deemed necessary in connection
6 with a project.

7 10. "Research park" means an area of land that has been designated by
8 the Arizona board of regents as a research park for a university and that, at
9 the date of designation, is owned by this state or by the Arizona board of
10 regents.

11 11. "Single family dwelling unit" includes any new, used or
12 manufactured house that meets the insuring requirements of the federal
13 housing administration, the veterans administration or any other insuring
14 entity of the United States government or any private mortgage insurance or
15 surety company that is approved by the federal home loan mortgage corporation
16 or the federal national mortgage association.

17 Sec. 10. Section 42-5069, Arizona Revised Statutes, is amended
18 effective from and after August 31, 2008, to read:

19 42-5069. Commercial lease classification: definitions

20 A. The commercial lease classification is comprised of the business of
21 leasing for a consideration the use or occupancy of real property.

22 B. A person who, as a lessor, leases or rents for a consideration
23 under one or more leases or rental agreements the use or occupancy of real
24 property that is used by the lessee for commercial purposes is deemed to be
25 engaged in business and subject to the tax imposed by article 1 of this
26 chapter, but this subsection does not include leases or rentals of real
27 property used for residential or agricultural purposes.

28 C. The commercial lease classification does not include:

29 1. Any business activities that are classified under the transient
30 lodging classification.

1 2. Activities engaged in by the Arizona exposition and state fair
2 board or county fair commissions in connection with events sponsored by those
3 entities.

4 3. Leasing real property to a lessee who subleases the property if the
5 lessee is engaged in business classified under the commercial lease
6 classification or the transient lodging classification.

7 4. Leasing real property pursuant to a written lease agreement entered
8 into before December 1, 1967. This exclusion does not apply to the
9 businesses of hotels, guest houses, dude ranches and resorts, rooming houses,
10 apartment houses, office buildings, automobile storage garages, parking lots
11 or tourist camps, or to the extension or renewal of any such written lease
12 agreement.

13 5. Leasing real property by a corporation to an affiliated
14 corporation. For the purposes of this paragraph, "affiliated corporation"
15 means a corporation that owns or controls at least eighty per cent of the
16 lessor, that is at least eighty per cent owned or controlled by the lessor or
17 that is at least eighty per cent owned or controlled by a corporation that
18 also owns or controls at least eighty per cent of the lessor. Ownership and
19 control are determined by reference to the voting shares of a corporation.

20 ~~6. Leasing real property for sublease if the tenant in possession of~~
21 ~~the property is subject to the rental occupancy tax pursuant to article 9 of~~
22 ~~this chapter.~~

23 ~~7.~~ 6. Leasing real property for boarding horses.

24 ~~8.~~ 7. Leasing or renting real property or the right to use real
25 property at exhibition events in this state sponsored, operated or conducted
26 by a nonprofit organization that is exempt from taxation under section
27 501(c)(3), 501(c)(4) or 501(c)(6) of the internal revenue code if the
28 organization is associated with major league baseball teams or a national
29 touring professional golfing association and no part of the organization's
30 net earnings inures to the benefit of any private shareholder or individual.

1 ~~9.~~ 8. Leasing or renting real property or the right to use real
2 property for use as a rodeo featuring primarily farm and ranch animals in
3 this state sponsored, operated or conducted by a nonprofit organization that
4 is exempt from taxation under section 501(c)(3), 501(c)(4), 501(c)(6),
5 501(c)(7) or 501(c)(8) of the internal revenue code and no part of the
6 organization's net earnings inures to the benefit of any private shareholder
7 or individual.

8 ~~10.~~ 9. Leasing or renting dwelling units, lodging facilities or
9 trailer or mobile home spaces if the units, facilities or spaces are intended
10 to serve as the principal or permanent place of residence for the lessee or
11 renter or if the unit, facility or space is leased or rented to a single
12 tenant thirty or more consecutive days.

13 ~~11.~~ 10. Leasing or renting real property and improvements for use
14 primarily for religious worship by a nonprofit organization that is exempt
15 from taxation under section 501(c)(3) of the internal revenue code and no
16 part of the organization's net earnings inures to the benefit of any private
17 shareholder or individual.

18 ~~12.~~ 11. Leasing or renting real property used for agricultural
19 purposes under either of the following circumstances:

20 (a) The lease or rental is between family members, trusts, estates,
21 corporations, partnerships, joint venturers or similar entities, or any
22 combination thereof, if the individuals or at least eighty per cent of the
23 beneficiaries, shareholders, partners or joint venturers share a family
24 relationship as parents or ancestors of parents, children or descendants of
25 children, siblings, cousins of the first degree, aunts, uncles, nieces or
26 nephews of the first degree, spouses of any of the listed relatives and
27 listed relatives by the half-blood or by adoption.

28 (b) The lessor leases or rents real property used for agricultural
29 purposes under no more than three leases or rental agreements.

30 ~~13.~~ 12. Leasing, renting or granting the right to use real property to
31 vendors or exhibitors by a trade or industry association that is a qualifying
32 organization pursuant to section 513(d)(3)(C) of the internal revenue code

1 for a period not to exceed twenty-one days in connection with an event that
2 meets all of the following conditions:

3 (a) The majority of such vending or exhibition activities relate to
4 the nature of the trade or business sponsoring the event.

5 (b) The event is held in conjunction with a formal business meeting of
6 the trade or industry association.

7 (c) The event is organized by the persons engaged in the particular
8 trade or industry.

9 ~~14.~~ 13. Leasing, renting or granting the right to use real property
10 for a period not to exceed twenty-one days by a coliseum, civic center, civic
11 plaza, convention center, auditorium or arena owned by this state or any of
12 its political subdivisions.

13 ~~15.~~ 14. Leasing or subleasing real property used by a nursing care
14 institution as defined in section 36-401 that is licensed pursuant to title
15 36, chapter 4.

16 ~~16.~~ 15. Leasing or renting a transportation facility as provided in
17 ~~section 28-7705, subsections A and B~~ TITLE 28, CHAPTER 22.

18 ~~17.~~ 16. Granting or providing rights to real property that constitute
19 a profit à prendre for the severance of minerals, including all rights to use
20 the surface or subsurface of the property as is necessary or convenient to
21 the right to sever the minerals. This paragraph does not exclude from the
22 commercial lease classification leasehold rights to the real property that
23 are granted in addition to and not included within the right of profit à
24 prendre, but the tax base for the grant of such a leasehold right, if the
25 gross income derived from the grant is not separately stated from the gross
26 income derived from the grant of the profit à prendre, shall not exceed the
27 fair market value of the leasehold rights computed after excluding the value
28 of all rights under the profit à prendre. For the purposes of this
29 paragraph, "profit à prendre" means a right to use the land of another to
30 mine minerals, and carries with it the right of entry and the right to remove
31 and take the minerals from the land and also includes the right to use the

1 surface of the land as is necessary and convenient for exercise of the
2 profit.

3 D. The tax base for the commercial lease classification is the gross
4 proceeds of sales or gross income derived from the business, but
5 reimbursements to the lessor for utility service shall be deducted from the
6 tax base.

7 E. Notwithstanding section 42-1104, subsection B, paragraph 1,
8 subdivision (b) and paragraph 2, the failure to file tax returns for the
9 commercial lease classification that report gross income derived from any
10 agreement that constitutes, in whole or in part, a grant of a right of profit
11 à prendre for the severance of minerals does not constitute an exception to
12 the general rule for the statute of limitations.

13 F. For the purposes of this section:

14 1. "Leasing" includes renting.

15 2. "Real property" includes any improvements, rights or interest in
16 such property.

17 Sec. 11. Section 42-6208, Arizona Revised Statutes, is amended
18 effective from and after August 31, 2008, to read:

19 42-6208. Exempt government property improvements

20 The tax under this article does not apply with respect to:

21 1. Property that is used for a governmental activity.

22 2. Property that is used for public housing.

23 3. Easements and rights-of-way of railroads and gas, electric, water,
24 pipeline and telephone utilities.

25 4. Interests in all or any part of a facility that is owned of record
26 by a government lessor and used primarily for athletic, recreational,
27 entertainment, artistic, cultural or convention activities if the interest is
28 used for those activities or activities directly related and incidental to
29 these uses including concession stands.

30 5. Property that is located on municipal airports and airports that
31 operate pursuant to sections 28-8423, 28-8424 and 28-8425, if the property is
32 used for or in connection with aviation, including hangars, tie-downs,

1 aircraft maintenance, sale of aviation related items, charter and rental
2 activities, commercial aircraft terminal franchises, parking facilities and
3 restaurants, stores and other services that are located in a terminal.

4 6. The use by a commercial airline of the runways and terminal
5 facilities of state, city, town or county airports and public airports
6 operating pursuant to sections 28-8423, 28-8424 and 28-8425.

7 7. Leases of property or interests in a transportation facility that
8 is constructed or operated pursuant to title 28, chapter 22, ~~article 1 or 2~~.

9 8. Interests in property held in trust for an Indian or an Indian
10 tribe by the United States government.

11 9. Interests in property that is defined as "contractor-acquired
12 property" or "government-furnished property" in the federal acquisition
13 regulations (48 Code of Federal Regulations section 45.101) and that is owned
14 by the government and used to perform a government contract.

15 10. Property of a corporation that is organized by or at the direction
16 of a county, city or town to develop, construct, improve, repair, replace or
17 own any property, improvement, building or other facility to be used for
18 public purposes that the county, city or town pledges to lease or
19 lease-purchase with county or municipal special or general revenues.

20 11. Interests in property used by a chamber of commerce recognized
21 under section 501(c)(6) of the United States internal revenue code if the
22 property is used predominately for those federal tax exempt purposes.

23 12. Interests in property used by organizations that are exempt from
24 taxation under section 501(c)(3) of the internal revenue code.

25 13. Interests in parking garages or decks if the parking garages or
26 decks are owned and operated by a government lessor or operated on behalf of
27 a government lessor, by an entity other than the prime lessee, pursuant to a
28 management agreement with the government lessor.

29 14. Residential rentals if the prime lessee is the occupant.

1 Sec. 12. Applicability

2 Title 28, chapter 22, Arizona Revised Statutes, as added by this act,
3 does not apply to transportation or transit projects that are in the
4 department of transportation's statewide highway construction plan or
5 transportation or transit projects that are in the regional transportation
6 plan of a county on the effective date of this act. For the purposes of this
7 section, a regional transportation plan is a twenty year comprehensive,
8 performance based, multimodal and coordinated regional transportation plan
9 that is approved for the county as provided by law and as amended or
10 otherwise modified.

11 Sec. 13. Emergency

12 This act is an emergency measure that is necessary to preserve the
13 public peace, health or safety and is operative immediately as provided by
14 law."

15 Amend title to conform

ANDY BIGGS

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